

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Skowron-Muco	Team: Team # 2	CCRB Case #: 200817273	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/28/2008 3:30 PM	Location of Incident: § 87(2)(b)	Precinct: 122	18 Mo. SOL 5/28/2010	EO SOL 5/28/2010	
Date/Time CV Reported Fri, 11/28/2008 4:46 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 11/28/2008 4:46 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Aldo Yubini	08600	939729	122 PCT
2. POM Omar Delcid	31872	936454	122 PCT
3. POM Alex Fernsmith	07310	934856	122 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Aldo Yubini	Abuse: PO Aldo Yubini stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.POM Alex Fernsmith	Abuse: PO Alex Fernsmith stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.POM Omar Delcid	Abuse: PO Omar Delcid stopped § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
D.POM Omar Delcid	Abuse: PO Omar Delcid frisked § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E.POM Alex Fernsmith	Abuse: PO Alex Fernsmith frisked § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
F.POM Aldo Yubini	Abuse: PO Aldo Yubini frisked § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
G.POM Omar Delcid	Discourtesy: PO Omar Delcid spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)

## Synopsis

On November 28, 2008, § 87(2)(b) filed a complaint through the call processing system regarding an incident that took place on that same day.

On November 28, 2008 at approximately 3:30PM, as § 87(2)(b) stood outside of § 87(2)(b) located at 925 Manor Street in Staten Island, and smoked cigarettes with § 87(2)(b) and § 87(2)(b) a silver Chevy Impala pulled up to the barber shop and PO Delcid, PO Yubini and PO Fernsmith exited the vehicle. PO Fernsmith told § 87(2)(b) § 87(2)(b) and § 87(2)(b) that he could smell marijuana. Then, the officers instructed § 87(2)(b) § 87(2)(b) and § 87(2)(b) to drop their cigarettes, which were regular cigarettes, not marijuana cigarettes, and place their hands against the storefront window (**Allegations A, B, and C**). At that point, § 87(2)(b) § 87(2)(b) and § 87(2)(b) were frisked by PO Delcid, PO Yubini and PO Fernsmith (**Allegation D, E, F**). After the frisks were completed, § 87(2)(b) exited the barber shop and as the officers proceeded to leave the location, PO Delcid stated, "Go fuck yourself" to § 87(2)(b) (**Allegation G**).

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old, 5'11" tall, white male. On November 28, 2008 at approximately 3:30PM, § 87(2)(b) § 87(2)(b) and § 87(2)(b) smoked cigarettes in front of § 87(2)(b) which is located at § 87(2)(b) in Staten Island. A silver Chevy Impala pulled up to the barber shop and three male plainclothes officers exited the vehicle. § 87(2)(b) realized that the males were officers because their shields and guns were visible. Two of the officers were Hispanic and both were approximately 5'10"-5'11" tall and approximately 175 lbs with short black hair. The officers did not have any other obvious identifying characteristics. The third officer was a Caucasian male, approximately 6' tall and 180 pounds, with wavy blonde hair. § 87(2)(b) was certain that the driver was one of the Hispanic officers, but he was not sure which one. He was also sure that the Caucasian male was the passenger. The Caucasian male was the first officer to exit the vehicle. The investigation identified this officer as PO Alex Fernsmith of the 122<sup>nd</sup> Precinct. The two Hispanic officers followed immediately. Those officers were identified as PO Aldo Yubini and PO Omar Delcid of the 122<sup>nd</sup> Precinct. PO Fernsmith stated that he could smell weed. The officers realized that § 87(2)(b) § 87(2)(b) and § 87(2)(b) were not smoking marijuana but they still told them to drop their cigarettes and place their hands on the storefront window.

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) complied and placed their hands on the window without being physically assisted by the officers, then they were frisked by the officers. § 87(2)(b) stood in between § 87(2)(b) and § 87(2)(b) and was frisked last. The officers started the frisk at the arms and patted § 87(2)(b) § 87(2)(b) and § 87(2)(b) down to the ankles. The officers felt the outside of § 87(2)(b) § 87(2)(b) and § 87(2)(b)'s clothing but did not enter the pockets. Each of three officers frisked either § 87(2)(b) § 87(2)(b) and § 87(2)(b) but § 87(2)(b) did not know which of the officers frisked which of the men because § 87(2)(b) § 87(2)(b) and § 87(2)(b) faced the storefront window with their backs to the officers. § 87(2)(b) asked PO Fernsmith whether someone called in a complaint and that was why the officers suspected the use of marijuana but PO Fernsmith stated no. After the frisk was completed, § 87(2)(b)'s partner, § 87(2)(b) came out of the barber shop and was asked by the driver if he was going to stay outside or inside the barber shop. § 87(2)(b) stated that he would remain outside the barber shop and he proceeded to write down the license plate number of the Chevy Impala, which was § 87(2)(e), § 87(2)(b). PO Delcid, who was the driver, yelled out the license plate number sarcastically. § 87(2)(b) observed PO Yubini's shield number to be 8600. The officers wrote down the names of § 87(2)(b) § 87(2)(b) and § 87(2)(b). To § 87(2)(b)'s knowledge, no report was written as a result of this.

As the officers headed back to their vehicle, there was a verbal exchange between PO Delcid and § 87(2)(b). At that point, PO Delcid told § 87(2)(b) “Go fuck yourself” and that he would be back there everyday.

### **Results of Investigation**

#### **Attempts made to contact the victims**

On December 16, 2008, the investigator attempted to contact § 87(2)(b) and § 87(2)(b). There were no response and a message was left for § 87(2)(b). A message could not be left for § 87(2)(b) because there was no option to do so. On that same day, a search of the Lexis-Nexis database yielded addresses for § 87(2)(b) and § 87(2)(b) but the search did not yield an address or contact information for § 87(2)(b). On December 16, 2008, the investigator generated and mailed first please call letters to § 87(2)(b) and § 87(2)(b). On December 19, 2008, the investigator contacted § 87(2)(b) and scheduled an interview for January 6, 2009. On that same day, the investigator attempted to contact § 87(2)(b) who stated that he could not schedule an interview and that he would call the investigator when he was ready to schedule an interview. On January 6, 2009, § 87(2)(b) failed to appear for his previously scheduled interview and he did not call to cancel or reschedule. On January 7, 2009, the investigator generated and mailed a missed appearance letter to § 87(2)(b). On January 15, 2009, the investigator attempted to contact § 87(2)(b). There was no response and a message was left. On that same day, the investigator contacted § 87(2)(b) who was unable to schedule an interview and stated that he would call back when he was ready to do so. On February 10, 2009, the investigator attempted to contact § 87(2)(b). There was no response and a message could not be left because there was no option to do so. On that same day, the investigator attempted to contact § 87(2)(b). There was a busy signal and a message could not be left. On February 10, 2009, the investigator mailed a final please call letter to § 87(2)(b). The letter was not returned to the CCRB. On February 11, 2009, the investigator attempted to contact § 87(2)(b). There was no response and a message was left. On that same day, the investigator attempted to contact § 87(2)(b). There was a busy signal and a message could not be left.

#### **Identification of officers interviewed**

At his CCRB interview, § 87(2)(b) revealed that he observed shield number 8600 during the incident. A search of the (CTS) Complaint Tracking System revealed that shield number 8600 belongs to PO Aldo Yubini of the 122<sup>nd</sup> Precinct and PO Maritza Cancel of the 50<sup>th</sup> Precinct. Given that the incident took place in Staten Island and the 122<sup>nd</sup> Precinct is located in Staten Island, PO Yubini was interviewed in connection with this incident. At his CCRB interview, PO Yubini revealed that he worked with PO Alex Fernsmith and PO Omar Delcid during the incident.

#### **Subject officer statements**

##### *PO Aldo Yubini (Encl. 7b-7c)*

PO Aldo Yubini, a § 87(2)(b)-old, 5’10” tall, Hispanic male was interviewed at the CCRB on January 14, 2009. On November 28, 2008, PO Yubini was on duty, in plainclothes and assigned to Anti-crime with PO Omar Delcid in a blue Chevrolet Impala. PO Yubini did not have any entries in his memo book regarding this incident.

On November 28, 2008 at approximately 3:30PM, PO Yubini, PO Delcid and PO Fernsmith patrolled in the vicinity of a barber shop at § 87(2)(b) where there have been complaints to police with regard to guns at the location. The complaints were received by the Anti-crime team and PO Yubini did not know specifically who made the complaints. § 87(2)(f)

PO Yubini was only on the Anti-Crime team for two weeks when he was informed about the complaints. PO Delcid was the driver of the unmarked car. Neighbors have seen guns in the trunks of cars. The officers patrol the area and when

they see someone who fits the description, the officers talk to that person. In that area, robberies and auto break-ins are prevalent.

On the day of the incident, PO Yubini, PO Delcid and PO Fernsmith observed a group of people, who were approximately 25 feet away and who were in front of a barber shop. PO Yubini could not recall how many people there were exactly but he speculated that there were approximately 2 or 3 males there. PO Yubini, PO Delcid and PO Fernsmith stopped their vehicle, identified themselves as officers approached the men, who were in front of the barber shop, at which point, the men became rude and confrontational and more individuals came out of the barber shop. At that point, PO Yubini feared for his safety. PO Yubini, PO Delcid and PO Fernsmith approached the men because they wanted to question them about reports of guns at the location, which were made a few days prior. Simultaneously, PO Yubini, PO Delcid and PO Fernsmith each frisked a male at the location. PO Yubini conducted a full body frisk and no weapons were recovered.

PO Yubini did not state “Go fuck yourself to anyone” and he did not make use of any obscenities. PO Delcid and PO Fernsmith did not state “Go fuck yourself to anyone” and they did not make use of any obscenities. There were not any other officers at the incident location, which lasted approximately ten minutes. None of the civilians requested PO Yubini’s name or shield and PO Yubini did not recall if the civilians requested the name or shields of the other officers.

PO Omar Delcid (Encl.8b-8c)

PO Omar Delcid, a § 87(2)(b)-old, 6’2” tall, Hispanic male was interviewed at the CCRB on February 26, 2009. On November 28, 2008, PO Delcid was on duty, in plainclothes and assigned to Anti-Crime with PO Aldo Yubini and PO Alex Fernsmith in a gray Chevrolet Impala. PO Delcid was the operator. PO Delcid did not have any entries in his memo book regarding this incident.

On November 28, 2008 at approximately 3:30PM, PO Delcid, PO Yubini and PO Fernsmith drove in the vicinity of a shopping plaza on § 87(2)(b) and they observed three individuals in front of a barber shop. PO Delcid was the operator and PO Fernsmith was seated in the passenger front and PO Yubini sat in the backseat. PO Delcid and PO Fernsmith smelled marijuana when they were a car length away, approximately ten feet away, from a barber shop. PO Delcid witnessed that two of the three men outside of the barber shop, who were barber shop employees because they wore the uniform shirt, were smoking and he could see the smoke but the smell of marijuana was the most prominent indicator that marijuana was being smoked. PO Delcid maintained that an individual would be able to easily smell marijuana from ten feet away, if it is being smoked.

As PO Delcid, PO Yubini and PO Fernsmith stopped their unmarked vehicle in front of the barber shop and approached the men, two of the individuals made a quick gesture to the small of their backs. PO Delcid considered this to be a threat to the officers’ safety because the men made furtive movements as they attempted to conceal something in the small of their backs and the officers did not know what the men were concealing. § 87(2)(e), § 87(2)(f)

§ 87(2)(b)  
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§ 87(2)(b)

No marijuana cigarettes were recovered because PO Delcid speculated that the men shoved the remainder of the marijuana cigarette into the back of their pants. At that point, the men were not free to leave. PO Delcid, PO Yubini and PO Fernsmith conducted a weapons frisk of the men which entailed a pat down of the waist and the individuals’ names were noted by PO Delcid. PO Delcid stood back as security as PO Yubini and PO Fernsmith frisked the men. The men were not searched. No weapons were recovered. The three men appeared to be very nervous and PO Delcid speculated that the men thought that they would be

arrested. Initially, the men were shocked because they were caught smoking marijuana but when they realized that they were not going to get arrested, they became agitated and began to curse and one of the men copied down the license plate number of the unmarked vehicle. A stop and frisk report was prepared, however, PO Delcid speculated that the report may have been lost.

After the weapons frisk was conducted, two more men exited the barber shop and one of them yelled, "What the fuck are you guys doing? This is a place of business and you can't be doing this." PO Delcid responded that marijuana was being smoked and for that reason, he could stop the men. One of the individuals who exited the barber shop was Abnor Marke and PO Delcid has arrested § 87(2)(b) in the past for felony possession of cocaine. PO Delcid could not recall whether onlookers began to gather. PO Delcid did not use any obscenities and he did not hear any other officer make use of obscenities.

PO Alex Fernsmith (Encl.9-9a)

PO Alex Fernsmith, a § 87(2)(b)-old, 6'2" tall, white male was interviewed at the CCRB on April 8, 2009. On November 28, 2008, PO Fernsmith was on duty, in plainclothes and was assigned to Anti-Crime with PO Delcid and PO Yubini in a Chevrolet Impala.

On November 28, 2008 at approximately 3:30PM, PO Delcid, PO Yubini and PO Fernsmith drove down § 87(2)(b) in Staten Island, where there is a small shopping plaza. PO Fernsmith did not know the name of the shopping plaza. § 87(2)(e), § 87(2)(f)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

On the day of the incident, PO Delcid, PO Yubini and PO Fernsmith drove down § 87(2)(b) with all their windows rolled down so that they could hear things and smell things better. PO Fernsmith speculated that PO Delcid was the driver and he sat in the back but he could not recall for sure. As PO Delcid, PO Yubini and PO Fernsmith got within approximately a car's length of the barber shop, they could smell a strong odor of marijuana and see some smoke. PO Fernsmith and PO Delcid were able to smell the marijuana right away. PO Fernsmith was unable to recall if all three men smoked or whether there was more than one marijuana cigarette. PO Fernsmith never observed a marijuana cigarette. PO Delcid, PO Yubini and PO Fernsmith exited their vehicle and stated "Police, don't move." The three men began to toss things and make furtive movements to the small of their backs and they appeared to be nervous. PO Delcid, PO Yubini and PO Fernsmith did not recover anything from the scene. The three men were angry and combative and asked "Why are you harassing me? We are not doing anything. We are just in front of the barber shop."

Within seconds of getting out of their vehicle, given that there was a strong odor of marijuana and the men were not compliant after they were told to stop moving, PO Fernsmith feared for his own safety and the safety of PO Delcid and PO Yubini and, at that point, PO Delcid, PO Yubini and PO Fernsmith each frisked one of the men simultaneously. The men were frisked for weapons and the frisk entailed a pat down from the shoulder down. PO Fernsmith did not observe any bulges on any of the males but they wore jackets because it was cold outside. PO Fernsmith was not able to recall which one of the men he frisked. Another male exited the barbershop and stated "This is my place of business. Why the fuck are you harassing me?"

No weapons or marijuana were recovered and PO Delcid, PO Yubini and PO Fernsmith left the incident location. PO Delcid, PO Yubini and PO Fernsmith did not question the men about possession of a shotgun or weapons. PO Fernsmith has never interacted with any of these men at all. Neither one of the officers stated "Go fuck yourself" or made use of any obscenities at all.

## **NYPD documents**

### **122nd Precinct tour 2 roll call for January 28, 2008 (Encl. 10)**

The tour 2 roll call for January 28, 2008 indicated that PO Delcid, PO Fernsmith and PO Yubini were on duty and assigned to the Anti-Crime unit.

### **Stop and Frisk Report (UF-250)**

A request for a stop and frisk report in connection with this complaint yielded negative results

## **Conviction History and Disposition of Charges**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Subject Officers' CCRB history (Encl. 1-3)**

PO Yubini has been a member of the NYPD for three years and PO Delcid and PO Fernsmith have each been members of the NYPD for four years. Neither one of the officers has ever had a CCRB complaint substantiated against him by the CCRB.

## **Civilian's CCRB history**

This is the first and only complaint that § 87(2)(b) has filed with the CCRB.

## **Conclusions and Recommendations**

### **Subject officer identification:**

Although § 87(2)(b) was not able to specify which officer frisked which male, § 87(2)(b) stated that he, § 87(2)(b) and § 87(2)(b) were stopped and frisked by two Hispanic plainclothes officers, one of whose shield numbers was observed by § 87(2)(b) to be shield number 8600, and a white male plainclothes officer. A search of the (CTS) Complaint Tracking System revealed that shield number 8600 belongs to PO Aldo Yubini of the 122<sup>nd</sup> Precinct and PO Maritza Cancel of the 50<sup>th</sup> Precinct. Given that the incident took place in Staten Island and the 122<sup>nd</sup> Precinct is located in Staten Island, PO Yubini was interviewed in connection with his incident. At his CCRB interview, PO Yubini revealed that he worked with PO Alex Fernsmith and PO Omar Delcid during the incident. PO Fernsmith, a white male and PO Delcid and PO Yubini, who are Hispanic males, admitted to stopping and frisking § 87(2)(b) and § 87(2)(b). Furthermore, § 87(2)(b) alleged that the Hispanic officer, who was the driver of the unmarked car, stated "Go fuck yourself" to § 87(2)(b). At his CCRB interview, PO Delcid maintained that he was the driver of the unmarked car. § 87(2)(g)

### **Undisputed facts:**

The following statements are not disputed: On November 28, 2008, PO Yubini, PO Delcid and PO Fernsmith stopped and frisked § 87(2)(b) § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) which is located at § 87(2)(b) in Staten Island.

### **Disputed facts:**

§ 87(2)(g)

### Assessment of the Evidence

§ 87(2)(b) alleged that PO Yubini, PO Delcid and PO Fernsmith stopped him, § 87(2)(b) and § 87(2)(b) in front of § 87(2)(b) in Staten Island, which he is a proprietor to. PO Fernsmith, PO Yubini and PO Delcid confirmed that they did, in fact, drive up to the barber shop and approach § 87(2)(b) and § 87(2)(b) as they stood in front of the barber shop. During his CCRB interview, PO Yubini articulated that he and PO Fernsmith and PO Delcid stopped the men in front of the barber shop with regard to complaints of guns at the location. However, during their respective CCRB interviews, PO Fernsmith and PO Delcid maintained that when the unmarked vehicle was within approximately ten feet of § 87(2)(b) they could smell the odor of burning marijuana and witnessed smoke. Although PO Delcid, PO Yubini and PO Fernsmith patrolled the area because of complaints of guns at the location, PO Fernsmith and PO Delcid maintained that the reason why § 87(2)(b) § 87(2)(b) and § 87(2)(b) were stopped was as a result of what he perceived to be the commission of a Penal Law Misdemeanor. PO Fernsmith maintained that he stated “Police, don’t move” as he exited the unmarked vehicle. Although § 87(2)(b) denied that he, § 87(2)(b) and § 87(2)(b) smoked marijuana, he did state that PO Fernsmith told him, § 87(2)(b) and § 87(2)(b) that he could “smell weed” as he exited the unmarked car. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

It was alleged by § 87(2)(b) that he and § 87(2)(b) and § 87(2)(b) were frisked by PO Delcid, PO Fernsmith and PO Yubini, who all admitted to the frisk. PO Yubini and PO Delcid maintained that § 87(2)(b) and § 87(2)(b) made furtive movements to the small of their backs and appeared nervous as they were approached by the officers. § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

As the officers approached § 87(2)(b) § 87(2)(b) and § 87(2)(b) on the incident date, the officers did not know the identities of the males but PO Delcid observed that two of the three men wore barber shop uniform shirts. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that as the officers returned to their vehicle at the conclusion of the stop and frisk, PO Delcid stated “Go fuck yourself” to § 87(2)(b). Although § 87(2)(b) was contacted by the investigator several times, he did not provide a statement. Furthermore, the investigator was not able to successfully obtain statements from the other victims of the incident. PO Delcid denied using any discourtesies and similarly, PO Yubini and PO Fernsmith stated that PO Delcid did not make use of discourtesies during the incident. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation A: PO Aldo Yubini stopped § 87(2)(b) and § 87(2)(b)**

**Allegation B: PO Alex Fernsmith stopped § 87(2)(b) and § 87(2)(b)**

**Allegation C: PO Omar Delcid stopped § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(g) Level III stop as is outlined by the NYS Court of Appeals, which states that officers must have, “reasonable suspicion that a person is committing, has committed or is about to commit a felony or Penal Law misdemeanor” in order to, “stop the subject...and detain him while an expeditious investigation is conducted to determine if there is probable cause to arrest the subject.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation D: PO Aldo Yubini frisked § 87(2)(b) and § 87(2)(b)**  
**Allegation E: PO Alex Fernsmith frisked § 87(2)(b) and § 87(2)(b)**  
**Allegation F: PO Omar Delcid frisked § 87(2)(b) and § 87(2)(b)**

§ 87(2)(g)  
[REDACTED] The Patrol Guide Procedure states that, “When a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor,” uniformed members of service may frisk individuals when they suspect they or others may be in danger of physical injury. § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation G: PO Omar Delcid spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(g)  
[REDACTED] § 87(2)(b) s account is different than the accounts provided by PO Delcid, PO Fernsmith and PO Yubini and statements from § 87(2)(b)  
§ 87(2)(b) and § 87(2)(b) were not successfully obtained. § 87(2)(g)  
[REDACTED]

Investigator:  
Magdalena Skowron-Muco  
Supervisor:  
  
Reviewed by:  
  
Reviewed by:

Date:  
  
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